IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 233 OF 2005
IN
APPEAL FROM ORDER NO. 238 OF 2005

Smt.Mani Narayan. ... Appellant.

V/s

Empire Guide Co-op. Hsg.
Soc.Ltd. and another. ... Respondents.

M.M.Vashi for the appellant.

Ms.Anita Trivedi with Sanjay Singh i/b.
Gabriel Pillai for respondent No.1.

Ms.Geeta Joglekar for respondent No.2.

CORAM: A.S. OKA, J.

DATE: 7th March, 2005.

P.C. :

. Rule.

2. Respondents waive service.

3. By communication dated 27th August 2004 the Respondent No.2 corporation informed the Respondent No.1 society as under:

> ".....I now hereby give a notice under Rule 4.4.1 of the said Rules calling upon you to get the supply separated by fixing sub-meters for the aforesaid portion of the premises, within 3 months from the date of service of this notice. (For this purpose; an application in the prescribed form is to be made through a Licensed Plumber are after obtaining a permission from, the work of

separating out the supply has to be carried out through the licenced plumber and got certified from this office).

. If the supply is not separated out as above within the stipulated period of three months, the entire consumption of the premises will be charged at the higher applicable rate from the date of starting the use without any further reference to you and on dispute whatsoever will be entertained."

By further communication dated 13th January 2005 the Respondent No.2 corporation informed the Respondent No.1 as under:

". You are hereby called upon to restore the water supply to Room 2-A of Smt.Mani Narayan within two days from receipt of this letter and inform this office failing which Smt.Narayan will be authorised to restore the supply by employing her own plumber.

. Regarding charging of water supply to the 28 shops including Smt.Narayan is Studio at the Commercial rates, it is to be mentioned that you failed to comply the notice issued under No.C/9146/D-IV of 27.8.04....."

4. Thus it is very clear that the Respondent No.2 corporation never called upon the Respondent No.1 to disconnect the water supply to the premises of the Appellant. What the corporation informed was that the water supply to the premises of the Appellant shall be separated by fixing a sub-meter within three months from the date of service of notice.

5. Shri Vashi, learned counsel for the Appellant states that the Appellant is ready and willing to get

a sub-meter fixed for supply of water to her premises at her own cost.

6. By the impugned order it is recorded that the Respondent No.1/Plaintiff has cut off the water supply to the Appellant. The learned trial Judge has directed that water supply cannot be restored to the premises of the Appellant unless consent is given by the Respondent No.1 society. The learned counsel for the Respondent No.1 states that consent cannot be given by the society as there is a proceeding pending between the parties regarding alleged nonpayment of maintenance and other charges by the Appellant.

7. Prima facie, it appears that though the Respondent No.2 corporation did not call upon the Respondent No.1 to disconnect water supply to the premises of the Appellant, the Respondent No.1 has done so. By the impugned order, while considering the prayer for ad-interim relief the learned trial Judge has directed that no water connection can be given to the Appellant without the consent of the Respondent No.1. The said direction, prima facie appears to be illegal.

8. Hence the water supply to the premises of the Appellant will have to be protected till the disposal of the appeal.

9. Hence I pass the following order:

O R D E R

(i) It will be open for the Appellant to apply to the Respondent No.2 corporation for fixing sub-meter for supply of water to her premises. If such application is made, the Respondent No.2 corporation shall consider the said application and permit the Appellant to fix the sub-meter on payment of necessary charges. The application made by the Appellant shall not be rejected on the ground that consent of the Respondent No.1 is not obtained. On permission being granted by the Respondent No.2 corporation and after the sub-meter is fixed by the Appellant, the Respondent No.1 will restore the water supply to the premises of the Appellant.

(ii) Notwithstanding the pendency of this Appeal, the learned trial Judge will proceed with the hearing of the notice of motion and dispose it of without being influenced by the interim order passed by this Court.

(iii) It is needless to mention that the Appellant will pay the water charges at the commercial rate as per the reading recorded in the sub-meter.

10. The civil application is disposed of in the above terms with no order as to costs.

*****